



April 28, 2022

Via ECF

Hon. Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

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Re: *Securities and Exchange Commission v. AT&T Inc., et al.*, No. 21 Civ. 01951 (PAE) –
Joint Letter Motion to Temporarily File Certain Summary Judgment and Expert Motion
Materials Under Seal

Dear Judge Engelmayer:

We write jointly on behalf of Plaintiff and Defendants (the “Parties”) to respectfully request leave for the Parties to file certain materials under temporary seal in connection with the Joint Statement of Undisputed Material Facts (Dkt. No. 82) and the Parties’ forthcoming motions for summary judgment and motions to strike experts (the “Forthcoming Filings”).

The Parties continue to meet and confer with respect to whether certain documents, deposition testimony, and information derived therefrom that will be utilized in the Forthcoming Filings shall remain designated as Confidential Discovery Material under the Stipulation and Order Governing the Production and Exchange of Confidential Information (the “Protective Order”) (Dkt. No. 47). This information consists of documents and testimony AT&T has designated as sensitive, proprietary and highly confidential financial, accounting and business strategy documents that AT&T does not publicly disclose and could be used by competitors to harm AT&T.

In addition, certain non-parties have requested that Confidential Discovery Material produced by them in the SEC’s investigation or this litigation be filed under seal.

The Parties’ ongoing discussions are particularly relevant with respect to expert materials that will be included in the Forthcoming Filings. During the weeks of April 8 and April 15, five experts for the Plaintiff and five experts for Defendants sat for depositions through the April 22, 2022 close of expert discovery. Under the Protective Order, the Parties have until 30 days after receipt of each final deposition transcript to designate deposition testimony as Confidential Discovery Material and, until that time, such materials are deemed Confidential Discovery Material. *Id.* ¶ 4.B. The Protective Order further provides that “[i]n the event any Confidential Discovery Material is to be used in any filing with the Court, the filing shall be redacted or filed under seal in accordance with the Federal Rules of Civil Procedure and the Court’s Individual Rules and Practices in Civil

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Cases.” *Id.* ¶ 22; *see also id.* ¶ 21 (stating “all Confidential Discovery Material in any publicly filed version of the document shall be redacted or filed under seal”).

During the pendency of the 30-day confidentiality period applicable to deposition testimony, the Parties will simultaneously file the Forthcoming Filings. Specifically, motions for summary judgment and motions to strike experts shall be filed pursuant to the deadlines set forth in the Third Amended Civil Case Management Plan and Scheduling Order (Dkt. No. 77):

- May 3, 2022 is the deadline to file motions for summary judgment and to strike experts.
- May 20, 2022 is the deadline to file responses to motions for summary judgment and to strike experts.
- May 31, 2022 is the deadline to file any replies to motions for summary judgment and to strike experts.

Dkt. No. 77. The Parties also intend to file the exhibits to the Joint Statement of Undisputed Material Facts with the Court on April 29, 2022.

The Parties wish to maximize public access to the Forthcoming Filings, narrowly tailor any requests to redact or seal, protect the interests of Defendants and non-parties, and minimize the burden on the Court with respect to all such matters. To achieve these objectives, the Parties desire to continue their ongoing negotiations with respect to confidentiality with the objective of minimizing (or eliminating) any subsequent motion practice, including by non-parties. The Parties also seek to adhere as closely as possible to Your Honor’s Individual Practices with respect to sealing and redactions requiring Court approval.

To that end, the Parties respectfully request Your Honor to permit the Parties to utilize the following temporary sealing procedure with respect to the Forthcoming Filings:

- Exhibits to the Joint Statement of Undisputed Material Facts: The Parties shall file any exhibit containing information that a Party or producing non-party deems to contain Confidential Discovery Material under seal.
- Motions for Summary Judgment: The Parties shall file motions for summary judgment, responses and replies thereto, and supporting documents under seal.
- Motions to Strike Experts: The Parties shall file motions to strike experts, responses and replies thereto, and supporting documents under seal.
- Public Filing of Sealed Materials: On June 10, 2022, the Parties shall follow the procedure set forth in Section 4(b) of Your Honor’s Individual Practices with respect to any filings that were made under seal. The Parties shall publicly file all such documents with proposed redactions, electronically file under seal a copy of the unredacted document with the proposed redactions highlighted, and the party or non-party seeking to make redactions or

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continue the sealing of any such documents (or portions thereof) shall file a motion or letter motion for approval.

- Plaintiff Reserves Right to Challenge Confidentiality Designations: Plaintiff reserves the right to assert that any documents designated as Confidential Discovery Material should not be sealed and does not waive or concede that right by agreeing to the procedures set forth herein.

We believe that the foregoing procedures will permit the Parties to narrowly tailor any redactions, provide the public with access to the filings, and minimize the burden on the Court and the Parties. We also remain available to discuss any modifications or concerns the Court might have and will adhere to the Court's desired procedures.

Very truly yours,

/s/ Richard S. Krumholz

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Randall W. Jackson
Counsel for Defendant AT&T Inc.

/s/ Jeffrey M. Tillotson

Jeffrey M. Tillotson
Counsel for Defendants Messrs. Black, Evans, and Womack

/s/ Victor Suthammanont

Victor Suthammanont
Counsel for Plaintiff Securities and Exchange Commission

cc: All Counsel of Record (via ECF)

The Court thanks the parties for this letter, grants their motion for temporary sealing, and approves the procedures set out above. The parties should not expect any extension of the June 10, 2022 deadline for public filing of the documents. SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge
5/2/22